

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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FBG WALL LLC,

Plaintiff,

- against -

WAL-MART REAL ESTATE BUSINESS TRUST,

Defendant.
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: Electronically filed

: Case No. 08 CV 1255(KMK)

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NOTICE OF DISMISSAL

: **PURSUANT TO FRCP 41(a)(1)**

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PLEASE TAKE NOTICE that, no party having answered or served a motion for summary judgment, the above-captioned action is hereby dismissed pursuant to FRCP 41(a)(1) with prejudice as to all claims asserted in the action relating to amounts claimed due and invoiced to Defendant by Plaintiff for Defendant's pro rata share of various expenses claimed due under the Lease Agreement through December 31, 2007 which were the subject of the action (such expenses include general CAM expenses, liability insurance, security expenses, pylon sign expenses, detention pond maintenance expenses, common roadway maintenance expenses and real estate taxes on detention ponds); but shall be without prejudice as to any claims based upon Defendant's obligations to pay the Additional 2007 CAM Amount (as defined in the Third

Amendment to Lease Agreement executed by the parties in or about May 2008) and to pay any amounts due under the said Lease Agreement from and after December 31, 2007.

Dated: New York, New York
May 6, 2008

ARONAUER, RE & YUDELL, LLP

By: _____/s/_____
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